EXHIBIT A:

PROPOSAL FOR DECISION, MPSC CASE NOS. U-11620 & U-11630

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of **CENTENNIAL CELLULAR CORPORATION** against **AMERITECH MICHIGAN.**	)	Case No. U-11620
In the matter of the complaint of **CENTURY CELLUNET, INC.**, against **AMERITECH CORPORATION, et al.**, regarding Ameritech's unilateral termination of Type 2A interconnection with CMRS providers.	)	Case No. U-11630

PROPOSAL FOR DECISION

I.

HISTORY OF PROCEEDINGS

On January 9, 1998, Centennial Cellular Corporation (Centennial) filed a complaint against Ameritech Michigan (Ameritech) regarding the withdrawal of its Tariff 13. The complaint was docketed as Case No. U-11620 and a copy of it served on Ameritech on January 16, 1998. A prehearing conference on the complaint was held on February 3, 1998. Ameritech filed its Answer and Affirmative Defenses on February 20, 1998

On February 6, 1998, Century Cellunet, Inc., now known as CenturyTel Wireless,

Inc. (Century), also filed a complaint against Ameritech, as well as a Motion to Consolidate its complaint with the earlier-filed complaint of Centennial. Century's complaint was docketed as Case No. U-11630 and served on Ameritech on February 13, 1998. Ameritech filed its Answer and Affirmative Defenses on February 23, 1998.

On February 25, 1998 a prehearing conference took place in Case No. U-11630. At that time, a hearing on the Motion to Consolidate was scheduled, as well as a schedule for the remainder of the proceeding.

On March 3, 1998, argument was heard on the Motion to Consolidate and the Motion was granted. Appearances were entered on behalf of Thumb Cellular (Thumb), Airtouch Cellular, Inc. (Airtouch) and Trillium Cellular Corp. (Trillium), all of which had filed late petitions to intervene.

On March 6, 1998, the Administrative Law Judge issued a written ruling granting the late-filed petitions to intervene of Thumb, Airtouch and Trillium as well as a further late-filed petition filed on behalf of RFB Cellular, Inc. (RFB).

On March 24, 1998, hearing took place on a Motion to Compel Discovery filed by Centennial. The Motion was granted in part.

On April 16, 1998, argument was heard on a Motion to Compel Discovery filed by Century. The Motion was granted in part.

On May 6-8, 1998, cross-examination of witnesses took place. Centennial presented the direct, supplemental and rebuttal testimony of Phillip H. Mayberry, its

Senior Vice President, and the direct, supplemental and rebuttal testimony of Thomas R. Cogar, Jr., its Vice President of Engineering. Century presented the direct and rebuttal testimony of Susan W. Smith, its Director of External Affairs, and Dale Fox, its Region II Vice President. Thumb presented the direct and rebuttal testimony of Paul C. Picklo, its General Manager. RFB presented the testimony of Robert Broz, its President. Airtouch presented the testimony of Raymond G. Fix, its Director of Michigan Engineering and Network Operations. Trillium presented the direct and rebuttal testimony of Michael D. Khouri, its Northwest Michigan General Manager and of Kenneth E. Hardman, an attorney and partner in the law firm of Moir & Hardman in Washington, D.C. Ameritech presented the testimony of Eric L. Panfil, its Director - Local Exchange Competition Issues, and John D. Earle, a Senior Product Marketing Manager in Ameritech Information Industry Services (AIIS).

Prior to the cross-examination of witnesses, argument was heard on various pre-filed motions to strike testimony. These motions were granted in part. The portions of testimony stricken from the record appear as lined out copy in the transcript of the proceeding.

During the course of the hearing, Complainants[1] offered 36 exhibits which were

[1] The two original Complainants, Centennial and Century, as well as all the intervenors in the case, are referred to as Complainants or Cellular Mobile Radio Service (CMRS) providers in this Proposal for Decision. The exhibits of Centennial and Century were prefixed with a "C", the exhibits of the intervenors were prefixed

admitted in evidence. Ameritech offered 11 exhibits, 10 of which were admitted. Exhibits C-8, 9, 14-21, 40-41 and 43 were marked confidential. R-28 and R-32 were also marked confidential.

The record was closed on May 8, 1998. A transcript of the proceedings was prepared consisting of 874 pages.

Initial briefs were filed by Centennial, Century, Airtouch, Thumb, RFB, Trillium and Ameritech. Reply briefs were filed by Centennial, Century, Airtouch, Thumb, Trillium and Ameritech.

II.

BACKGROUND

On October 1, 1997, Ameritech filed Tariff 20R, a revision of Tariff 13. By means of the revision, Ameritech withdrew its offering of reverse billing[2] . In order to allow for a transition away from reverse billing, Ameritech proposed a "Flexible Rating" plan. However, during the course of the proceeding, Ameritech indicated that it would continue reverse billing until April 9, 1999, the date upon which expires the last Interconnection Agreement with a CMRS provider in which reverse billing is a provision

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with an "I".

[2] This is referred to variously as reverse billing, Type 2A interconnection, Type 2, Option 1 interconnection and Type 2, Billing Option 1. In this Proposal for Decision it will be referred to as reverse billing.

of the agreement.

Reverse billing has been in effect for over a decade. It has been available in Michigan since the Commission approved a settlement agreement adopting Ameritech Tariff 13 in Case No. U-9269, March 3, 1989. It constitutes one of the several types of interconnection delineated in the settlement agreement. In the agreement, CMRS providers (called at that time wireless carriers), were given the discretion to name any Ameritech end office as a Type 2A end office, with an NXX code which would be designated as Type 2A. If the carrier did not name an end office Type 2A, it would be designated Type 2T, or toll end office, and landline originated calls to a CMRS customer would be billed to the landline end-user in that office. The latter type of interconnection and billing arrangement is termed "standard billing".

The concept of reverse billing is integral to the provision of the larger local calling areas typical of wireless service. When the wireless industry was in its infancy, the Federal Communications Commission (FCC) determined that the local calling area applicable to traditional landline local exchange carriers' (LECs) customers was not appropriate for application to wireless carriers. The FCC allowed the establishment of a much larger territory for wireless carriers. It defined those carriers' local calling area as the metropolitan trading area (MTA). Reverse billing allows CMRS subscribers' needs to be met within the CMRS provider's licensed metropolitan service areas (MSAs) and rural service areas (RSAs).

If a CMRS provider selects reverse billing, as opposed to standard billing, it is required to certify to Ameritech which central offices it will use to designate its reverse billing NXX codes. Landline calls to the NXX code assigned to mobile phone customers of the CMRS are not billed to the landline end-user. Rather, Ameritech bills the CMRS provider an access-like charge of 2¢ per minute for such calls. The CMRS provider recovers that cost in rates to its customers. This permits CMRS providers and their customers to benefit from large wireless local calling areas because landline calls to mobile phone users are not charged as toll calls. The reason for this is that the land to mobile call is routed first to Ameritech, then to the local CMRS point of presence/switch and then on to the CMRS customer's phone. Even if the mobile phone user is located geographically in a different area code, the land to mobile call is not billed as a toll call, because the call is still being placed within the local calling area of the CMRS NXX code.

CMRS providers typically issue phone numbers for their customers randomly out of one NXX code assigned to them, regardless of the geographic location of the customer, thus conserving the number of NXX codes required to serve their customers This conservation effect is also an offshoot of the larger local calling areas assigned CMRS providers. CMRS customers' phones are programmed with the NXX code, thus any change to their phone numbers would require a change in the programming of the phones. Landline calls to mobile phones thus may be made by dialing 7 digits rather than 1 plus 10 digits.

The "Flexible Rating" option Ameritech is offering still allows the CMRS provider to choose which Ameritech end office at which to rate its reverse billing NXX codes except that it restricts landline local calls to only those calls made within the geographic area code and its adjunct extended area service (EAS) exchanges. Landline calls from any other exchanges would be assessed a toll charge based upon Ameritech's customary toll rate schedule between the originating landline exchange and the exchange at which the cellular carrier's NXX code is rated.

III.

DISCUSSION

Reverse Billing - Interconnection

Complainants assert that: reverse billing is a form of interconnection under the Michigan Telecommunications Act, 1991 PA 179 (MTA) and the Federal Telecommunications Act of 1996 (FTA); that under the FTA reciprocal compensation requirements can be avoided by a voluntary agreement between the parties; and, that absent such an agreement, the Michigan Public Service Commission (Commission) can require Ameritech to offer reverse billing. First, Complainants cite the definition of interconnection contained in section 102(k) which states:

> "'Interconnection' means the technical arrangements and other elements necessary to permit the connection between the switched networks of 2 or more providers to enable a

telecommunications service originating on the network of 1 provider to terminate on the network of another provider."

Complainants point out that under this definition, interconnection consists of both the physical, technical connection as well as the "other elements necessary to permit connection". These other elements include among other things, pricing. They further cite Article 3A, entitled "Interconnection of Telecommunication Providers with the Basic Local Exchange Service" which provides for the pricing of interconnection between telecommunication providers and basic local exchange service providers. Section 353 broadly addresses the need for the Commission to report to the legislature regarding issues, scope, terms and conditions of interconnection of telecommunication providers with the LEC.

Complainants point to the Commission approved settlement agreement in Case No. U-9269, where the case caption explicitly referred to the interconnection between the then Michigan Bell Telephone Company and what were then termed Public Mobile Carriers, and which governed all aspects of interconnection, including pricing. They also referred to Commission orders in Case No. U-10860, order issued June 5, 1996, and Case No. U-11574, order issued May 11, 1998, where the Commission has exercised authority over the rates, terms and conditions of interconnection, not just the physical interconnection.

Complainants presented testimony regarding the physical and technical

implications of reverse billing, demonstrating that it is not merely a billing mechanism. Ameritech routes reverse billing traffic on 2A trunks. Standard billed calls are routed over a 2T trunk group. If reverse billing is eliminated, all land to mobile traffic will be routed over 2T trunk groups. Even Ameritech admitted that CMRS carriers would need to increase the number of 2T trunks in order to handle the change in routing. Exhibit C-2 at 49, 72.

Century witness Smith related that when Century had determined to change to standard billing in certain areas where reverse billing had been in effect, Ameritech determined that the prior reverse billing traffic had to be routed over Century's 2T trunks, even though Century had earlier been advised that that traffic would continue to flow over its 2A trunks. When Ameritech rerouted the calls to the 2T trunks, it resulted in the blockage of up to 40% of its calls during peak calling periods. In order to ameliorate the situation, Century has added approximately 250 2T trunks between January 1997 and March 1998.

Complainants observe that the physical nature of the reverse billing interconnection is supported by Ameritech's Wireless Customer Ordering Handbook (Exhibit C-27) which defines Type 2A connection and describes it as a particular kind of interconnection enabling the wireless service provider to originate and terminate calls to and from the access tandem.

Complainants further contend that reverse billing is recognized as integral to

interconnection in federal law. Section 251(c)(2)(D) of the FTA requires LECs to provide interconnection with their networks to telecommunications providers, on rates terms and conditions that are just, reasonable and nondiscriminatory. It is impossible to determine whether a physical linking to the LEC network is just and reasonable absent consideration of rates, terms and conditions.

Complainants admit that Section 251(b)(5) of the FTA requires LECs to enter into reciprocal compensation arrangements for the exchange of traffic and that the FCC has issued 47 CFR section 51.703 which prohibits LECs from assessing charges to CMRS providers for traffic that originates on the LEC's network. However, they argue that this means a LEC may not force CMRS providers to pay for calls originating on the LEC's network, not that LECs and CMRS providers cannot voluntarily agree to such an arrangement. Section 252(a)(1) of the FTA allows LECs and interconnecting carriers to enter into agreements regarding interconnection without regard to the standards contained in Section 251(b) and (c). Such agreements have been entered into between all the CMRS carriers involved in this proceeding and Ameritech and have been approved by the Commission. It is noteworthy that Ameritech has conceded that it will not withdraw reverse billing until the current term of the last such agreement expires. Complainants assert that since the agreements have been approved as nondiscriminatory and not inconsistent with the public interest under Section 252(e)(2)(A), Ameritech is barred from claiming they violate that section of the FTA.

Finally, the Complainants contend that while section 252(c)(1) would prevent CMRS providers being forced to compensate Ameritech for traffic originating on its network, nothing in the section indicates the Commission could not require Ameritech to provide reverse billing as an option for CMRS providers. Section 261(b) of the Act allows a State commission to prescribe regulations fulfilling the requirements of the FTA as long as they are consistent with it. In addition, Section 205 of the MTA authorizes the Commission to order changes in the provision of telecommunications services if there is a finding that the conditions of service are adverse to the public interest.

Ameritech's chief arguments are that reverse billing is not a form of interconnection, that it is counter to the FTA's reciprocal compensation paradigm, that withdrawal of reverse billing is not prohibited by law and that the Commission does not have the authority to order Ameritech to offer reverse billing.

Ameritech argues that the FTA interconnection requirement contained in Sections 251(c)(2)(C) and (D) pertain only to the physical interconnection between CMRS providers and the LEC. The term "interconnection" is defined by the FCC as only the physical linking between two networks for the mutual exchange of traffic.[3] The Section 102(k) definition of interconnection in the MTA refers to the physical link between

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[3] In In Re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98 (August 8, 1996), paragraph 176.

providers. The "other elements" portion of the definition refers to necessary physical part of the interconnection, without which a call could not be transmitted. Ameritech contends that interconnection cannot be more than just the physical link because when the quality of interconnection is measured, it is measured in terms of the quality of the physical connection. In Case No. U-10138, order issued February 23, 1993, the Commission ruled that intraLATA toll access to IXCs was not inferior just because access was provided by dialing more digits than Ameritech customers had to dial. The Commission measured interconnection and its quality by looking at the technical quality of the call signal and the fact that the call was routed over the same types of facilities.

Ameritech also contends that while reverse billing is not explicitly prohibited by federal law, recent FCC interpretations of the FTA reciprocal compensation requirements suggest that continuing reverse billing is not permissible. Ameritech relies 47 CFR 51.703 prohibiting LECs from assessing charges to CMRS providers for traffic originating on the LEC's network, and further points out that the FCC Common Carrier Bureau (CCB) has issued two recent interpretations of that rule. In March 1997, the CCB wrote that since CMRS providers were telecommunications carriers, LECs couldn't charge them for local traffic originating on a LEC network. A December 1997 letter reaffirmed this interpretation. From this, Ameritech concludes that withdrawal of reverse billing is consistent with federal law.

Ameritech also argues that nothing in either the FTA or the MTA prohibit the

withdrawal of reverse billing. Neither statute directly addresses reverse billing. The Commission's authority to prohibit withdrawal under the FTA is limited to its ability to determine if a breach of the Interconnection Agreements between CMRS providers and Ameritech has occurred. Section 261(b) of the FTA only allows the state to prescribe regulations to fulfill the requirements of the Act. Since reverse billing is not a requirement of the FTA, the state has no authority to promulgate rules pertaining to it. Section 261(b) indicates a state may not act contrary to the FCC rules promulgated to implement and interpret the Act. Since, as Ameritech earlier argued, the FCC prohibits reverse billing, the state could not take any action under this section to require Ameritech to offer reverse billing.

Furthermore, Ameritech contends that Section 205 of the MTA concerns itself with telecommunications "services". The reverse billing option is not such a service. Section 401 lists unregulated services as broad categories such as "cable" or "cellular". It does not allude to anything as specific as billing options. The use of the term "service" in section 102 of the MTA pertains to broad categories of service, not to such things as billing options. Since reverse billing is not a regulated "service" it does not fall within the purview of section 205 and thus the Commission has no authority to address it.

Ameritech also disagrees with the Complainants' argument that voluntary agreements, duly approved by regulatory authorities, are allowed under the FTA, and the terms of those agreements are not bound by other statutory requirements. Ameritech

contends that such agreements cannot create an exception to the FCC's clear prohibition against LEC assessment of charges on CMRS providers. Moreover, even if they could, those agreements would have to be voluntarily entered into by both parties. CMRS providers cannot compel acceptance of such agreements by Ameritech. In addition, carrying the FCC prohibition to its logical conclusion, the Complainants' argument means that as long as CMRS providers voluntarily agree to compensate Ameritech for calls to mobile phones made by landline callers, they will do so. When they decide not to do so, there is no legal requirement in place to assure such compensation will continue.

The Administrative Law Judge disagrees with Ameritech's narrow interpretation of the definition of the term "interconnection". She believes that under both the FTA and the MTA, interconnection includes both a physical link between the provider and the LEC, as well as other elements, such as rates (billing) and conditions pertinent to that link. Complainants have shown that there are physical parameters to reverse billing, including call routing and trunking requirements. According to Ameritech's own Wireless Customer Ordering Handbook, there are physical parameters to the connection of wireless provider to the Ameritech network. Century's narration of its own experience in changing to standard billing, including the changes made in routing calls, confirms this. With regard to "other elements", the Administrative Law Judge's review of the Interconnection Agreement between the parties, as well as the settlement agreement in

Case No. U-9629, reveals that interconnection is not purely a technical matter. Interconnection would not take place physically without the simultaneous establishment of pricing provisions. Subscriber call rating principles always have to be established whenever traffic is interchanged between two carriers. Thus, they are a necessary part of interconnection arrangements.

The Administrative Law Judge further finds Ameritech's reference to Case No. U-10138 unpersuasive. In that case, the Commission was ruling on a complaint about the inferior quality of access service to IXCs, not on the issue of what constituted interconnection. Additionally, she finds the FCC definition of interconnection cited by Ameritech was focused more on excluding transportation and termination from the definition than it was on determining whether interconnection itself included more than just the physical link between providers and LEC networks.

The Administrative Law Judge also disagrees with Ameritech that either the FTA scheme of reciprocal compensation or the FCC rule 47 CFR 51.703 relied on by Ameritech, dictate the withdrawal of reverse billing. The FTA does not specifically address reverse billing. Moreover, its reciprocal compensation paradigm is not directly applicable to the situation of the wireless industry. The industry has a history somewhat different than either LECs or IXCs. It is configured differently physically and the FCC has recognized these differences. FCC Rule 51.703 does not specifically mention reverse billing. It simply prohibits the assessment of charges by LECs on other carriers for local

traffic that originates on the LEC's network. Nor do the two FCC CCB letters contained in Exhibits I-37 and R-38 specifically address reverse billing. They address the practice of LECs to unilaterally impose flat monthly recurring charges on paging carriers for dedicated facilities between the LECs' serving end offices and the paging carriers' terminals over the carriers' objections. The CCB was not asked to decide whether the paging companies could voluntarily agree to such charges. The letters hardly constitute an unequivocal prohibition of reverse billing.

In any event, the Administrative Law Judge concludes that the CMRS providers and Ameritech could negotiate a Section 252 agreement which did not call for reciprocal compensation. Ameritech appears to concede this point or it would not have delayed implementation of the withdrawal of reverse billing until the last Interconnection Agreement with a reverse billing provision expired.

The issue of the Commission's authority under the FTA and the MTA to otherwise require Ameritech to provide a reverse billing tariff option is addressed below.

Public Interest Considerations

Complainants argue that Section 205(2) of the MTA, as well as Section 261(c) of the FTA, allow the Commission to require changes in how telecommunications services are provided if current conditions are adverse to the public interest. Complainants point out the many ways in which the withdrawal of reverse billing would

be adverse to the public interest. They first suggest that the withdrawal proposal constitutes a rate increase imposed on Ameritech's customers, especially those in rural areas. Because the effect of the withdrawal will be to dramatically decrease the size of cellular local calling areas, many land to mobile calls[4] which had previously been local calls would become toll calls. Complainants allege that Ameritech's residential intraLATA toll rates are approximately 18¢ per minute. For business customers, intraLATA toll ranges from 14 to 25¢ per minute for the first minute and from 8¢ to 22¢ for additional minutes. Estimates of the revenues which would accrue to Ameritech with the change to standard billing range from $76 million to $103 million.

Complainants reject Ameritech's claim that the number of calls that would shift from local to toll would be as low as 7%. They point out that Ameritech based its conclusion on a one month study based on billing records for land to mobile minutes of use (MOU) in December 1997. This study is not to be relied upon because Ameritech looked only at the number of landline calls to Centennial's phone numbers. Counting the number of landline calls originated at a landline phone wired to a local end-office, Ameritech assumed each phone call would be to a Centennial customer local to that end-office. Ameritech assumed no calls were made between various local rate areas.

Furthermore, Complainants point out, the effect of the shift from local to toll calls

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[4] Approximately 20%-30% of cellular traffic consists of land to mobile calling.

would be felt the most in rural areas. A study of the Centennial Jackson area indicated that 18% of calling minutes would be billed as toll calls, assuming calling patterns remained constant. In Clare, that percentage jumped to 53%. In Century's most rural region, RSA 6 and RSA 7, 100% of calls would be toll, as would be the case in Thumb's RSA 10. In Traverse City, Century has reverse billing in 40 Ameritech end offices. If reverse billing is withdrawn, the Century subscribers would have local land to mobile calling from only five Ameritech end offices. Approximately 57% of calls would become toll. In effect a higher percentage of rural customers would be required to pay toll charges for calls previously treated as local.

Complainants contend that none of the alternatives to reverse billing suggested by Ameritech would be adequate substitutes. The use of 800 or 888 numbers, 500-prefix calling or remote call forwarding would be unacceptable. The use of 800, 888 or 500-prefix numbers would use up scarce toll-free calling numbers that could be used nationwide and devote them to the task of insuring that existing local calling involving wireless carriers remains local. Call forwarding, while it might be an option, would drain NXX codes because each customer would have to be assigned multiple phone numbers for each end-office where local calling was desired in order to approximate reverse billing.

Complainants devote substantial argument to the adverse impact on NXX code depletion of both Ameritech's "Flexible Rating" proposal, as well as the possible use of call forwarding to substitute for reverse billing. Because CMRS providers assign phone

numbers without regard to geography in a virtually LATA-wide calling area and LECs assign phone numbers on a geographic basis, if Complainants desired to provide the same calling areas to their subscribers under either alternative proposal, many new NXX codes would be required.

Centennial observes that because of the shrunken size of local calling areas that would occur if reverse billing is eliminated, virtually all land to mobile calls to Centennial customers would become toll calls unless Centennial opened new NXX codes to be dispersed throughout its territory to fill in gap areas. Most areas would need far fewer than the 10,000 numbers contained in a block of NXX codes but Centennial would have to use a 10,000 number block for each gap. Centennial estimates it would need 21 NXX codes in addition to its current 8 to fill in the gap areas. Similarly, Century estimates it would need 221 additional new NXX codes; Thumb estimates it would require 27; Air Touch, 130 and, Trillium 13-50.

Complainants point out that of seven area codes in Michigan, five are projected to be exhausted within 10 years. In fact, on May 11, 1998, Ameritech notified Complainants that the 616 area code was in jeopardy and that NXX codes in that area code would be rationed at a 10 per month rate. Six of Centennial's eight NXX codes are in the 616 area code. Only 13% of available NXX codes remain in that area code. When area code NXX quotas are exhausted, area code splits occur, causing phone number changes for all numbers in the new area code, business and residence alike.

In addition to the problems created with NXX codes, Complainants each related other problems they would experience with the withdrawal of reverse billing: required reprogramming of each customers cellular handset; training of technicians and staff to deal with reprogramming; changing sales and marketing materials; increasing customer contact costs, including the cost of handling the complaints attendant upon the change and conducting surveys to determine which area code customers would prefer to be assigned to; losing customers due to inconvenience as well as to failing to deliver the promised mobile local calling area; decreasing revenues; and, lost opportunity costs. The costs to each CMRS provider associated with the elimination of reverse billing would vary depending on the size of the provider. Centennial alone estimated a total of $3.7 million in non-network costs.

Finally, Complainants argue that competition would be adversely affected by the withdrawal. Ameritech's action will help maintain the Ameritech monopoly on local exchange service. The mere fact that Ameritech can send the cellular market into turmoil by withdrawing its tariff is ample demonstration of its market power. CMRS providers have no other LEC to turn to or bargain with in order to connect with a network the size of Ameritech's in Michigan. Complainants point out that Ameritech is withdrawing wide local calling areas for cellular phone subscribers at a time when cellular service is becoming a competitor for local exchange traffic. In fact, wireless services are beginning to provide traditional landline service by providing wireless local loop service. Centennial

is providing such service in Puerto Rico and conducting a market test of it in Indiana. Moreover, Centennial suggests that if Ameritech's cellular affiliate, Ameritech Cellular, is not using reverse billing and assigns its phone numbers geographically, it will avoid the upheaval to be visited upon Complainants and thus possibly takeover some of their customer base.

Ameritech responds that MTA Section 205 relates only to regulated services. Reverse billing is not a service, either regulated or unregulated, under the MTA. Section 401 lists unregulated services and does not allude to billing options. The use of the word "service" as contained in the definition section of the MTA is associated with broad categories of service such as access service, basic local exchange service or cable service. Thus, Section 205 does not give the Commission authority to assess the impact on the public interest of the withdrawal of reverse billing.

Ameritech also argues that Complainants' concerns about potential rate increases imposed on Ameritech customers when reverse billed local calls become toll calls are unfounded. Ameritech asserts that if the impact were going to be as great as Complainants allege, the Attorney General or Staff would have intervened in this proceeding. Furthermore, Ameritech points out that CMRS providers select standard billing as opposed to reverse billing when there is a benefit to them, making suspect their concern about the impact on landline customers. Indeed, Airtouch offers billing arrangements to their customers where the calling party is directly billed both for the

originating call as well as the mobile customers air time. This arrangement is known as "Calling Party Pays" (CCP).

Ameritech contends that even if most reverse billed local calls become toll calls, it will not diminish the value of cellular service or necessarily decrease the number of calls to mobile phone customers. Ameritech points out that Complainants admitted that 80% of their call volumes are mobile to land anyway, rather than land to mobile. The landline caller who needs to contact a cell phone user will do so whether the call is local or toll, just as he or she would call another landline number regardless of whether the call was local or toll. CMRS providers want reverse billing to continue because it creates more air time for which they can bill their customers.

Ameritech rejects Complainants' objections to the "Flexible Rating" transition proposal, pointing out that the proposal is optional, that none of the alternatives discussed on the record were required to be put into place by CMRS providers and that Ameritech did expect any of them to be complete substitutes for reverse billing. Ameritech admits that if CMRS providers decided to open an NXX code in every Ameritech end-office, new NXX codes would be required. However, competing LECs (CLECs) are requesting new codes every day now, with the onslaught of local exchange competition. There is no legal barrier against this. Exhaustion of NXX codes is not against the public interest, but rather is a normal consequence of the establishment of competition and reciprocal compensation under the FTA. Need for new area codes is

simply a sign of expansion, a trade off for the benefits conferred by the FTA.

Ameritech admits there will be costs to CMRS providers associated with the transition away from reverse billing. However it asserts that those providers will receive benefits as well. Access charge payments to Ameritech will be reduced by $12 million and they will receive compensation from Ameritech for terminating calls. In addition, CMRS providers previously paid an access rate when they turned mobile to land traffic over to a LEC. Now they pay a TELRIC based rate of approximately .5¢ per minute for local traffic. These benefits can be or should have been passed on to their subscribers, which in turn will encourage call volumes to increase. With respect to lost customers, Ameritech argues that Complainants expect customer turnover, or churn, and that if one of them loses a customer another gains a customer. Even without reverse billing, one of the Complainant's witnesses testified that he expected a new customer gain of about 1% per month. Ameritech indicated that Complainants' concerns about reneging on their agreements with customers, or needing to revise sales materials to accommodate the withdrawal of reverse billing, were also without merit. Complainants' witnesses testified that none of their sales agreements with customers contained a reference to reverse billing, making it problematic whether the billing option played any role in customers' purchase plans.

Ameritech also contends that the elimination of reverse billing is not anti-competitive. Competition between CMRS providers will be as vigorous as before

elimination. As indicated above, there was testimony that customers purchase cell phone service for a number of reasons, safety being one. The ability to make cellular phone calls is the primary consideration, whether or not reverse billing is available is only a secondary one. With respect to the competition from wireless carriers to local exchange service, Ameritech pointed out that Centennial's wireless local loop is not a typical wireless service and was being analyzed by the FCC. Should it become competition for local exchange service, the continued use of reverse billing would only serve to create an unlevel playing field.

The Administrative Law Judge finds Ameritech's interpretation of MTA Section 205(2) unconvincing. That section indicates that if the Commission finds the quality, general availability or conditions for the regulated service are adverse to the public interest, the Commission may order changes in how the services are provided. The regulated service is the basic local exchange service provided by Ameritech, specifically the tariffed interconnection and billing option named reverse billing which Ameritech has offered and now threatens to remove. The Commission has determined that it has the authority to undertake public interest reviews of regulated carrier's activities. Case No. U-10138. The courts have upheld the Commission's authority to conduct such reviews. GTE North Inc. v Michigan Public Service Comm'n, 215 Mich App 137 (1996). Furthermore, FTA Section 261 would allow such a review within the context of enhancing the competitive environment of the intrastate telecommunications market

notwithstanding Ameritech's arguments that the FTA does not address the question of reverse billing.

The Administrative Law Judge finds disingenuous Ameritech's arguments that the Attorney General and the Staff would have participated in this proceeding if the potential revenue impact from withdrawal of reverse billing were so dire. The Administrative Law Judge recognizes that the revenue benefit to Ameritech does not technically constitute a rate increase. However, this does not negate the fact that Ameritech failed to rebut Complainants' evidence that Ameritech would experience a revenue windfall ranging from approximately $75 to over $100 million dollars merely from the elimination of reverse billing. Ameritech admitted in its post-hearing brief that it was aware that many currently local calls would become toll due to the shrinkage of the cellular local calling areas and that this awareness prompted the offering of the "Flexible Rating" proposal as a transition mechanism. Nor did Ameritech rebut the impact of the change in service on rural areas, except to say that if a landline user really needed to make a call, it would not matter whether the call was local or toll.

Ameritech further makes light of the possibility that further area code splits might be required if NXX codes continue to be exhausted. While to some extent that phenomena is the natural and expected result of growth in the telecommunications industry, it does cause hardship most especially to small businesses on tight margins who find themselves having to recreate all of their advertising to accommodate the change in

their phone numbers. The Administrative Law Judge believes that wise stewardship of NXX codes would better serve the public interest. Using them to preserve wider local area calling for CMRS providers is not the best use of such codes.

In this regard, the Administrative Law Judge rejects Ameritech's contention that CMRS providers are not required to try to preserve their former local calling areas by using up NXX codes. This goes to the heart of the wireless service industry. The nature of the service is mobility combined with wide local calling areas. The FCC has recognized that the wireless service industry is different from landline local exchange service, hence the institution of reverse billing. Ameritech's suggestion that if reverse billing were so important it would be a feature of the agreement between the provider and its customer ignores the fact that the local calling area is so integral to the service that it is automatically assumed to be part of the service. It is unreasonable to expect that the wireless industry would not attempt to protect its customers from the diminution of their service.

Ameritech's response regarding the anti-competitive nature of the tariff withdrawal emphasizes the lack of impact on CMRS providers as competitors with each other and de-emphasizes the competitive benefit to Ameritech. The Administrative Law Judge is persuaded that one of the chief reasons for the withdrawal of the tariff is not the FCC CCB opinion letters Ameritech relied upon but rather the concern of Ameritech that wireless service will eventually be a true threat to its hold on the basic local

exchange market in Michigan. Ameritech argued that with local exchange competition expanding in Michigan, the provision of reverse billing, along with complications attendant upon number portability, would create a telecommunications nightmare, thus reverse billing is best discarded across the board. The Administrative Law Judge notes that this was not brought up during the course of the hearing, and further observes that Ameritech's view of the expansion of competition in the provision of basic local exchange service is much broader than hers. Ameritech has successfully fended off true competition and the effort to eliminate reverse billing constitutes another such effort.

For all of these reasons, the Administrative Law Judge finds that the elimination of reverse billing would be adverse to the public interest.

Inferior Interconnection and Discrimination

Complainants argue that the withdrawal of reverse billing in conjunction with the attempt to provide a substitute calling area of similar scope constitutes an inferior connection under Section 305(1)(a) of the MTA. Additionally, they argue that reverse billing, though not an access service, is functionally equivalent to the originating access service Ameritech offers IXCs. If reverse billing were eliminated, Ameritech would, in effect, be discriminating against CMRS providers by not providing a service similar to what IXCs receive from Ameritech, in violation of Section 251(c)(2)(D) of the FTA as well as providing a quality of interconnection inferior to that provided to IXCs.

Furthermore, Complainants allege there is a close similarity between EAS arrangements and reverse billing. If reverse billing were eliminated, cellular carriers would have nothing comparable to those arrangements.

Ameritech responds that reverse billing is not a form of interconnection, nor is it an access service. Rather it is a unique compensation arrangement associated with interconnection. Furthermore, the access service provided to IXCs differs from reverse billing in that FCC rules allow charges to IXCs for originating interexchange calls. In IXC traffic, the calling party is the IXC customer. The LEC within whose network the call originates carries the call to the IXC POP within the LEC network where the call terminates. Under reverse billing, the calling party is not the mobile phone company customer. Ameritech contends that if reverse billing constitutes access service than CMRS providers should compensate Ameritech for their traffic terminating on Ameritech's network at 2¢ per minute rather than the .5¢ per minute local call termination charge.

The Administrative Law Judge agrees with Ameritech that reverse billing is not access service and is not analogous to the billing of IXCs for originating interexchange calls. However, she does not agree with Ameritech that reverse billing is not a form of interconnection, as discussed above. Nevertheless, she concludes there is insufficient information on the record to determine whether the alternatives to reverse billing testified to during the hearing constitute and inferior quality of interconnection. She

notes that Century produced testimony to the effect that when it elected standard billing, the switch over to that form of billing from reverse billing caused call blockage due to Ameritech's routing of the calls. Century was required to install additional trunk groups to avoid further such problems. However, she regards this testimony as insufficient to determine whether, as a whole, the service was inferior or whether this constituted a quality of service problem which was resolved. Nor is it clear from the record that the actual service resulting from the alternatives suggested by Complainants would be lower in quality or inferior compared to the service currently provided. With regard to the arguments regarding EAS, again the Administrative Law Judge finds insufficient evidence to determine whether the elimination of reverse billing while EAS was in effect would constitute discrimination under the FTA.

Settlement Agreement in Case No. U-9269

Complainants allege that the withdrawal of reverse billing is a violation of the Commission's order approving the settlement agreement in Case No. U-9269. Reverse billing, as contained in Tariff 13, resulted from the settlement negotiations in that case. The settlement agreement was approved by the Commission as being in the public interest. The fundamental interconnection arrangements negotiated and approved therein have constituted the basis for the CMRS/Ameritech interconnection since 1989. In the order, dated March 9, 1989, the Commission specifically reserved jurisdiction

over the matters contained in the agreement, among which was the billing of 2A service in the originating direction under Tariff 13. Complainants contend that the withdrawal of reverse billing, which was previously found to be in the public interest, is improper absent Commission approval. They request the Commission issue a cease and desist order requiring Ameritech to cease violating the 1989 order.

Ameritech's response is that the order in Case No. U-9269 does not obligate it to offer reverse billing in perpetuity. Ameritech points out that there is a two-year term provision contained in the agreement, beyond which it is not obligated to continue all the rates, terms and conditions in effect. It was understood that changes in state and federal law might require changes in the agreement. Neither the agreement nor Tariff 13 mention reverse billing. Ameritech further argues that settlement agreements are contracts under Michigan law. Since the agreement did not specify how long it would be in effect, the two-year limitation on the parties right to file for revision of the tariff constitutes the primary term. After the primary term expired, the term of the agreement became indefinite, and thus could be construed as terminable at the will of any party. Because the agreement disclaims any intent to resolve legal or ratemaking principles beyond those stated, any contractual rights created do not affect the parties' legal rights and obligations as altered by post-agreement changes in the law.

The Administrative Law Judge disagrees with Ameritech's position. Within the body of the agreement, at page ll, the agreement of the parties indicates they will wait

two years before commencing any action to revise the tariff. There is nothing in the language contained therein to indicate that changes to tariff can be made other than by making a filing with the Commission and seeking Commission approval. Ameritech is clearly in violation because it sought to change Tariff 13 without prior Commission approval.

Interconnection Agreements

Complainants allege that Ameritech is violating the approved CMRS/Ameritech interconnection agreements by withdrawing reverse billing. Ameritech contends that reverse billing is not named in the provisions of the interconnection agreements. Rather, reference is made to "then existing access charges". Ameritech takes this to mean that only if the tariff continues in existence, can CMRS providers elect to be billed under it.

The Administrative Law Judge rejects Ameritech's position. She finds the interconnection agreement reference to the "then existing access charges" to mean the level of the charges, not the reverse billing option itself. Furthermore, it appears that Ameritech has conceded the point, as it has indicated it will not withdraw reverse billing until the expiration of the last agreement which contains a reverse billing provision.

Arbitration

Trillium argues in its post-hearing brief that its interconnection agreement with Ameritech was approved on June 25, 1997. Section 5.1 of the agreement indicates an

expiration date of March 1999. Trillium contends that reverse billing is a provision of the agreement which may be a subject for arbitration under section 252(b) of the FTA and that this proceeding should constitute an arbitration of the matter.

The Administrative Law Judge disagrees. As Ameritech points out, arbitration proceedings under the FTA must follow certain procedural requirements which are quite different from those applicable to a contested case complaint proceeding. It is inappropriate to attempt to hybridize these proceedings as Trillium suggests.

MTA Section 304b(1)(g)

Trillium also raised the point that elimination of reverse billing violates MTA Section 304b(1)(g) which requires basic local exchange carriers to offer a rate that includes toll-free calling to contiguous Michigan local calling exchanges. Ameritech protests that this issue was not raised until post-hearing briefs and thus there is no record testimony or evidence to support it. The Administrative Law Judge agrees and rejects the argument for that reason.

Discovery Penalties

Complainants urge the Commission to discipline Ameritech for its failure to provide discovery in this case in a timely fashion. They cite as authority Section 203 of the MTA which allows the Commission to investigate a complaint filed under the MTA as a contested case pursuant to the Administrative Procedures Act (APA), MCLA 24.201

et seq.; Section 74 of the APA which authorizes an agency to provide for discovery; Rule 317 of the Commission's Rules of Practice and Procedure which mandates that discovery shall be conducted in the same manner as in the circuit courts; Rule 319 which authorizes the presiding officer to compel production of items such as notes, documents and photographs; and Rule 321 which describes penalties the presiding officer may levy if a subpoena is not complied with. They further point out that MCR2.313 is the court rule applicable to enforcement of discovery rules. It includes as possible remedies dismissal of a proceeding or entry of a default judgement. Complainants point out that the Commission dismissed a complaint in Case No. U-9725, order issued April 30, 1991, based on the complainant's failure to submit discovery.

Complainants request the Commission to take into account that the tardiness with which Ameritech submitted discovery caused Complainants to be unable to adequately prepare their testimony. Furthermore, they request the Commission order reimbursement to them of expenses incurred in taking depositions in the amount of $7,000, which Complainants contend is an economic loss pursuant to Section 601.

Ameritech responds that discovery orders were complied with; that the depositions taken by Complainants were of witnesses Complainants were aware of long prior to the hearing; and that the Commission has no authority to impose sanctions such as default or attorney fees under the MTA, the APA, the Court Rules or the Commission's Rules.

The Administrative Law Judge does not agree with Ameritech that the

Commission may not impose a default remedy under Commission Rule 317 which incorporates the court rules on discovery. However, she is not persuaded that default is the appropriate remedy in this situation. She believes Ameritech was tardy in providing discovery information, which should have been easily obtainable, regarding the economic benefit to Ameritech from the withdrawal of reverse billing. However, this issue was peripheral to the core issues in the case and, in any event, the case is disposed of in favor of Complainants.

The Administrative Law Judge does not agree with Ameritech's arguments that the Commission does not have authority under MTA section 601 to award attorney fees. This issue has been before the Commission recently, and the Commission has ruled that the statute allows the Commission to make whole those who have suffered economic loss due to a violation of the act. However, she does not agree with Complainants that an award of attorney fees associated with taking the depositions of witnesses Brohart, Devine and Bondy is appropriate. Such an award would be based not on a violation of the MTA but rather on a failure to provide timely discovery. In addition, it is not clear that the depositions needed to be taken just prior to the hearing, or with the urgency claimed by Complainants. Mr Devine and Ms. Bondy, at least, were known to Complainants long before the time of hearing. For these reasons she rejects Complainants' request for either a default judgement or for attorney fees in connection with discovery depositions.

IV.

CONCLUSION AND RECOMMENDATION

Based on her review of the evidence, the Administrative Law Judge concludes that Complainants have shown that reverse billing is integral to their interconnection with Ameritech; that withdrawal of reverse billing would be adverse to the public interest, a violation of existing Interconnection Agreements between CMRS providers and Ameritech, and a violation of the Settlement Agreement in Case No. U-9269; and, that the Commission has the authority to require Ameritech to continue offering the reverse billing option to CMRS providers in Michigan in order to enhance competition. She recommends that the Commission grant Complainants the relief they seek except for their claim of relief for a default judgement or attorney fees associated with the discovery process in this case.

MICHIGAN PUBLIC SERVICE COMMISSION

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Theodora M. Mace
Administrative Law Judge

June 23, 1998
Lansing, Michigan
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ISSUED AND SERVED: June 25, 1998